

TOP 10 8(A) BD ELIGIBILITY PROBLEMS

1) Late or non-submission of 8(a) Annual Review documents.

The most common eligibility problem 8(a) firms encounter is either the late or non-submission of required Annual Review documents. SBA is required to review each 8(a) firm's program eligibility every year on the firm's certification anniversary date. This office sends each participant a request for the required Annual Review documents and information shortly before the end of your program year which contains the date that your submission is due back to your Business Development Specialist (BDS). If it is not received by the due date, you will be sent a reminder and a second due date. If the information is not submitted by this second date, SBA's rules & regulations require us to start program termination proceedings against your firm. The termination process may result in the loss of your 8(a) certification. Once it is lost you cannot be certified in the program again. Since annual reviews are done every year on your anniversary date, you should be prepared for it and comply on time.

2) Late or non-submission of annual financial statements or failure to submit required type of statement based on sales level.

Your year end financial statements must be signed, dated and their accuracy verified by an authorized officer, partner, or sole proprietor of the concern. Firms with annual receipts of less than \$1 million may submit statements prepared in-house, in accordance with "generally accepted accounting procedures" or have a compilation statement prepared by a qualified CPA or independent public accountant. Those firms with sales of more than \$1 million and less than \$5 million must provide reviewed statements, prepared by a qualified CPA or independent public accountant. Statements are due within ninety (90) days after the close of the company fiscal year. Those firms with total sales of \$5 million and over are required to submit audited financial statements prepared by a CPA or independent public accountant. Those firms who will be submitting audited statements are allowed an additional 30 days due to the added complexity. **The company's sales figures on the Profit and Loss Statement must show the break-down of 8(a) and non-8(a) sales, if applicable.** The submission of proper, year end financial statements, (Balance Sheet and Profit and Loss Statements) is **mandatory** as a condition of 8(a) program participation, as noted in your signed 8(a) Participation Agreement. Firms who are delinquent in submitting annual financial statements are **ineligible to receive 8(a) contract awards.** In addition program termination proceedings may be initiated if financial statements are not received in this office by the required due date. Most 8(a) firms have calendar fiscal year end date (December 31). While the financial statement due date might correspond with the time that your accountant is doing your business & personal tax returns, there is no provision for any extensions to the financial statement submission date. Make sure that your CPA is aware of this mandatory 8(a) compliance requirement.

3) Failure to keep your BDS up to date on contact information changes, e.g. address, telephone number, e-mail address, etc.

8(a) firms must notify their BDS immediately upon making any changes to their contact information. Since we may be contacting you either via email, telephone, regular mail or certified mail, we must have accurate contact information for you. We are required by some of SBA's regulations to use "certified mail, return receipt requested" to contact you regarding certain issues, such as Annual Reviews. Several firms have actually lost their 8(a) certification because they either didn't notify SBA of their address change or they didn't bother to pick up their certified mail at the post office.

In the not so distant future, we will be contacting you via email regarding the new electronic Annual Review process, so it is imperative that we have your proper email address and SBA is not blocked by any SPAM filters.

4) Excessive compensation or withdrawals from the 8(a) concern.

Regarding the compensation of the owners of 8(a) firms, 13CFR124.112 states the following: (d) *Excessive withdrawals*. (1) The term withdrawal includes, but is not limited to, the following: officer's salary; cash dividends; distributions in excess of amounts needed to pay S Corporation taxes; cash and property withdrawals; bonuses; loans; advances; payments to immediate family members; investments on behalf of an owner, officer, or key employee; acquisition of a business not merged with the 8(a) Participant; charitable contributions; and speculative ventures.

Withdrawals are excessive if during any fiscal year, they exceed (i) \$150,000 for firms with sales up to \$1,000,000; (ii) \$200,000 for firms with sales between \$1,000,000 and \$2,000,000; and (iii) \$300,000 for firms with sales over \$2,000,000. The fact that a concern's net worth has increased despite withdrawals that are deemed excessive will not preclude SBA from determining that such withdrawals were detrimental to the attainment of the concern's business objectives or to its overall business development.

5) Failure to meet Competitive Business Mix targets.

To ensure that Participants do not develop an unreasonable reliance on 8(a) awards, and to ease their transition into the competitive marketplace after graduating from the 8(a) BD program, Participants must make maximum efforts to obtain business outside the 8(a) BD program. During both the developmental and transitional stages of the 8(a) BD program, a Participant must make substantial and sustained efforts, including following a reasonable marketing strategy, to attain the targeted dollar levels of non-8(a) revenue established in its business plan. You should use the 8(a) BD program as a resource to strengthen the firm for economic viability when 8(a) program benefits are no longer

available. During the transitional stage of the 8(a) BD program, a Participant must achieve certain targets of non-8(a) contract revenue (i.e., revenue from other than sole source or competitive 8(a) contracts). These targets are called non-8(a) business activity targets and are expressed as a percentage of total revenue. The targets call for an increase in non-8(a) revenue over time. During their transitional stage of program participation, Participants must meet the following non-8(a) business activity targets each year:

Participant's year in the transitional stage	Non-8(a) business activity targets (required minimum non-8(a) revenue as a percentage of total revenue)
1	15
2	25
3	35
4	45
5	55

SBA will measure the Participant's compliance with the applicable non-8(a) business activity target at the end of each program year in the transitional stage based on the Participant's latest fiscal year-end total revenue. At the end of each year of participation in the transitional stage, the SBA will review the Participant's total revenues to determine whether the non-8(a) revenues have met the applicable target. In determining compliance, SBA will compare all 8(a) revenues received during the year, including those from options and modifications, to all non-8(a) revenues received during the year.

Consequences of not meeting competitive business mix targets. Any firm that does not meet its applicable competitive business mix target for the just completed program year will be ineligible for sole source 8(a) contracts in the current program year, unless and until the Participant corrects the situation. SBA may initiate proceedings to terminate a Participant from the 8(a) BD program where the firm does not make good faith efforts to obtain non-8(a) revenues.

6) Failure of the person upon whom 8(a) eligibility is based to be the highest compensated individual in the firm.

13124.106 (3) allows non-disadvantaged individuals to participate in the management of an 8(a) concern but they MAY NOT receive compensation from the applicant or Participant in any form as directors, officers or employees, including dividends, that exceeds the compensation to be received by the highest officer (usually CEO or President). The highest ranking officer may elect to take a lower salary than a non-disadvantaged individual only upon demonstrating that it helps the applicant or Participant. You must obtain the prior written consent of the Director, Office of Business Development or designee before changing the compensation paid to the highest ranking

officer to be below that paid to a non-disadvantaged individual. See your BDS for further information or if you have questions on this matter.

7) Failure of the person upon whom 8(a) eligibility is based to devote full-time management to the 8(a) concern.

13CFR124.106 requires the following to maintain 8(a) eligibility:

(a)(1) An applicant or Participant must be managed on a full-time basis by one or more disadvantaged individuals who possess requisite management capabilities.

(2) A disadvantaged full-time manager must hold the highest officer position (usually President or Chief Executive Officer) in the applicant or Participant.

(3) One or more disadvantaged individuals who manage the applicant or Participant must devote full-time to the business during the normal working hours of firms in the same or similar line of business.

(4) Any disadvantaged manager who wishes to engage in outside employment must notify SBA of the nature and anticipated duration of the outside employment and obtain the prior written approval of SBA. SBA will deny a request for outside employment which could conflict with the management of the firm or could hinder it in achieving the objectives of its business development plan. See your BDS for further information or if you have questions on this matter.

8) Failure to obtain prior SBA approval of ownership changes.

A Participant may change its ownership or business structure so long as one or more disadvantaged individuals own and control it after the change and SBA approves the transaction in writing prior to the change. The decision to approve or deny a Participant's request for a change in ownership or business structure will be made and communicated to the firm by the Director, Office of Business Development. The decision of the AA/8(a) BD is the final decision of the Agency. A decision to deny a request for change of ownership or business structure may be grounds for program termination where the change is made nevertheless. A change in ownership does not provide the new owner(s) with a new 8(a) BD program term. See your BDS for further information or if you have questions on this matter.

9) Failure to Perform the Required Percentage of Work on an 8(a) Contract.

To assist the business development of Participants in the 8(a) BD program, an 8(a) contractor must perform certain percentages of work with its own employees. These percentages and the requirements relating to them are the same as those established for

small business set-aside prime contractors, and are set forth in 13CFR125.6. A Participant must certify in its offer that it will meet the applicable percentage of work requirement both sealed bid and negotiated procurements. (a) In order to be awarded an 8(a) contract, the 8(a) concern must agree that:

(1) In the case of a contract for services (except construction), the concern will perform at least 50 percent of the cost of the contract incurred for personnel with its own employees.

(2) In the case of a contract for supplies or products (other than procurement from a non-manufacturer in such supplies or products), the concern will perform at least 50 percent of the cost of manufacturing the supplies or products (not including the costs of materials).

(3) In the case of a contract for general construction, the concern will perform at least 15 percent of the cost of the contract with its own employees (not including the costs of materials).

(4) In the case of a contract for construction by special trade contractors, the concern will perform at least 25 percent of the cost of the contract with its own employees (not including the cost of materials).

10) Failure to submit SBA form 1790 Representative Report.

13CFR124.601 requires each Participant to submit annually a written report to its assigned BDS that includes a listing of any agents, representatives, attorneys, accountants, consultants and other parties (other than employees) receiving fees, commissions, or compensation of any kind to assist such participant in obtaining a Federal contract. The listing must indicate the amount of compensation paid and a description of the activities performed for such compensation. A copy of the compensation/marketing agreement should also be submitted. Failure to submit the report is good cause for the initiation of termination proceedings.

TO ACCESS THE MOST CURRENT UP TO DATE REGULATIONS FROM 13CFR124 GO TO: <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=03cedb797ab76940b1438735a0dc70fb&rgn=div5&view=text&node=13:1.0.1.1.17&idno=13#13:1.0.1.1.17.1.286.25>